

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Patrick Yu	Team: Squad #8	CCRB Case #: 201806532	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 08/03/2018 6:12 PM	Location of Incident: East 29th Street and Avenue U; 1992 East 29th Street	Precinct: 61	18 Mo. SOL 2/3/2020	EO SOL 2/3/2020	
Date/Time CV Reported Thu, 08/09/2018 4:44 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 08/09/2018 4:44 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM James Titus	03128	947544	061 PCT
2. Officers			061 PCT
3. POM Andrew Martinez	17009	964140	061 PCT
4. POM Artem Makaryan	07007	951953	061 PCT
5. An officer			061 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Michelle Figueroa	03963	948964	061 PCT
2. POM Eugene Blyumenfeld	16342	954555	063 DET
3. POF Stephanie Beplat	02854	963399	061 PCT
4. POM Kenneth Gonzalez	01308	963551	061 PCT
5. POM Nicholas Felix	27048	950397	061 PCT
6. POM Thomas Hionas	17202	958698	061 PCT
7. POM Shilendra Sawh	06697	931975	061 PCT
8. POM Agron Pervizi	31882	957029	061 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM James Titus	Abuse: In the vicinity of East 29th Street and Avenue U in Brooklyn, Police Officer James Titus threatened § 87(2)(b) with the use of force.	
B.POM Andrew Martinez	Abuse: In the vicinity of East 29th Street and Avenue U in Brooklyn, Police Officer Andrew Martinez threatened § 87(2)(b) with the use of force.	
C.POM James Titus	Discourtesy: In the vicinity of East 29th Street and Avenue U in Brooklyn, Police Officer James Titus spoke discourteously to § 87(2)(b)	
D.POM James Titus	Abuse: In the vicinity of East 29th Street and Avenue U in Brooklyn, Police Officer James Titus stopped § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
E.POM Andrew Martinez	Force: At 1992 East 29th Street in Brooklyn, Police Officer Andrew Martinez pointed his gun at § 87(2)(b)	
F.POM Artem Makaryan	Force: At 1992 East 29th Street in Brooklyn, Police Officer Artem Makaryan pointed his gun at § 87(2)(b)	
G.POM Andrew Martinez	Discourtesy: At 1992 East 29th Street in Brooklyn, Police Officer Andrew Martinez spoke discourteously to § 87(2)(b)	
H.POM James Titus	Force: At 1992 East 29th Street in Brooklyn, Police Officer James Titus tasered § 87(2)(b).	
I. Officers	Force: At 1992 East 29th Street in Brooklyn, officers used physical force against § 87(2)(b)	
J. An officer	Force: At 1992 East 29th Street in Brooklyn, an officer used physical force against § 87(2)(b)	
	§ 87(2)(g), § 87(4-b)	

Case Summary

On August 9, 2018, § 87(2)(b) filed this complaint with the CCRB via phone. § 87(2)(g)

On August 3, 2018, at approximately 6:12 p.m., in the vicinity of East 29th Street and Avenue U in Brooklyn, PO James Titus and PO Andrew Martinez of the 61st Precinct approached § 87(2)(b) and § 87(2)(b) and pointed their tasers at them (**Allegation A: Abuse of Authority, § 87(2)(g); Allegation B: Abuse of Authority, § 87(2)(g)**). PO Titus subsequently told § 87(2)(b) “Out the fucking car” (**Allegation C: Discourtesy, § 87(2)(g)**). PO Titus subsequently handcuffed § 87(2)(b) (**Allegation D: Abuse of Authority, § 87(2)(g)**). Shortly after the officers approached them, § 87(2)(b) ran from the officers and PO Martinez chased after him.

At the rear of 1992 East 29th Street in Brooklyn, PO Martinez and other officers from the 61st Precinct canvassed for § 87(2)(b). At some point, PO Martinez and PO Artem Makaryan of the 61st Precinct pointed their firearm at § 87(2)(b) (**Allegation E: Force, § 87(2)(g) Allegation F, Force, § 87(2)(g)**). PO Martinez then stated, “Get your fucking hands up” (**Allegation G: Discourtesy, § 87(2)(g)**). At this point, PO Titus entered the area where § 87(2)(b) was and PO Titus tasered § 87(2)(b) (**Allegation H: Force, § 87(2)(g)**). While on the ground, officers allegedly used force against § 87(2)(b) and an officer allegedly kicked § 87(2)(b) (**Allegation I: Force, § 87(2)(g); Allegation J: Force, § 87(2)(g)**). Officers handcuffed § 87(2)(b) and transported him back to the stationhouse. § 87(2)(b)'s arrest was later voided and he was released on the same day (Board Review 27).

§ 87(2)(g), § 87(4-b)

The CCRB is in possession of 16 BWC clips from 11 officers (Board Review 01-16). The CCRB is not in possession of any additional video footage.

Findings and Recommendations

Allegation (A) Abuse of Authority: In the vicinity of East 29th Street and Avenue U in Brooklyn, Police Officer James Titus threatened § 87(2)(b) with the use of force.

Allegation (B) Abuse of Authority: In the vicinity of East 29th Street and Avenue U in Brooklyn, Police Officer Andrew Martinez threatened § 87(2)(b) with the use of force.

Allegation (D) Abuse of Authority: In the vicinity of East 29th Street and Avenue U in Brooklyn, Police Officer James Titus stopped § 87(2)(b)

At 00:25 seconds of PO Martinez's BWC clip, PO Martinez exits his police vehicle and approaches the passenger side of a black Honda CRV (Board Review 01). At 00:28, PO Titus walks across the front of the vehicle to the driver side while he points his taser towards the vehicle. At 00:31, PO Martinez says, “Alright everybody out. Come on.” PO Martinez then points his taser towards the vehicle. During his CCRB interview, PO Martinez acknowledged that his BWC shut off after 00:34 seconds, but he did not know why it was turned off and he denied that it was intentional (Board Review 19).

At the beginning of PO Titus' BWC clip, PO Titus is standing by the driver side of a vehicle while he places the driver of the vehicle § 87(2)(b) in handcuffs (Board Review 02). At 00:10, PO Martinez is on the passenger side of the vehicle with his taser pointed at § 87(2)(b). From the BWC clip, § 87(2)(b) was wearing a white tank top and black shorts.

None of the other officers BWC clips capture when PO Titus and PO Martinez approach the vehicle. However, at 00:55 seconds of PO Eugene Blyumenfeld's BWC clip, it shows that § 87(2)(b) was wearing a white tank top and black track pants (Board Review 09).

Although § 87(2)(b) stated in his phone statement that PO Martinez and PO Titus pointed a firearm at them, the BWC shows that they had their tasers pointed. During the investigation, § 87(2)(b) was uncooperative with providing a sworn statement and the CCRB was unable to contact § 87(2)(b) and the female occupant to obtain their statements.

PO Martinez and PO Titus provided generally consistent accounts regarding the reasons why they approached § 87(2)(b) and the female individual (Board Review 18 and 19). PO Martinez and PO Titus were responding to a radio run regarding a male assaulting a female at 2705 Avenue T. While en route to the location of incident, they were flagged down by a MTA bus driver who directed them to a black Honda CRV near the corner of East 29th Street and Avenue U. PO Titus did not hear what the bus driver said, but the bus driver "aggressively" pointed to the passenger side of the bus by repeatedly pointing in that direction (Board Review 18). Once the bus moved, PO Titus saw a vehicle matching the description that was provided over the radio. PO Martinez stated that the bus driver said, "He ran into that car," while pointing at a Honda CRV; the bus driver did not say anything else (Board Review 19). In his CCRB statement, PO Martinez added that the assault occurred inside a vehicle. PO Titus did not say whether the assault occurred inside a vehicle, but he recalled a description of a vehicle was relayed over the radio. Neither PO Martinez nor PO Titus recalled the descriptions of the people involved in the assault. PO Titus saw three occupants getting into the vehicle: § 87(2)(b) was by the rear passenger side, the female was by the front passenger side, and § 87(2)(b) was by the front driver side. PO Titus approached the driver side of the vehicle while PO Martinez approached the passenger side. PO Martinez stated that he did not see anyone standing outside the vehicle and was unable to see what was happening inside the vehicle or how many occupants were inside. PO Titus and PO Martinez approached the vehicle to investigate the reported assault.

PO Titus did not recall if the civilians matched any of the descriptions of the suspect or victim that was relayed over the radio and PO Martinez did not recall if § 87(2)(b) matched the suspect. PO Titus drew his taser as he approached the vehicle for his safety and the safety of others because they were responding to an assault and he did not know what was inside the vehicle. PO Martinez did not have an independent recollection of why he drew the taser.

After approaching the vehicle, PO Martinez asked § 87(2)(b) what happened. PO Martinez did not recall § 87(2)(b) speaking much because § 87(2)(b) ran shortly after PO Martinez approached. PO Martinez subsequently engaged in pursuit of § 87(2)(b). In his CCRB statement, PO Titus stated that at some point after PO Martinez chased after § 87(2)(b) an unknown male approached PO Titus and said, "It was him. It was him." At this point, PO Titus believed that § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) were the perpetrators. As PO Titus spoke with § 87(2)(b) § 87(2)(b) stated that he did not know § 87(2)(b) and that § 87(2)(b) tried to get in his vehicle. Based off this information, PO Titus determined that § 87(2)(b) was not a threat or the perpetrator and subsequently released § 87(2)(b).

§ 87(2)(b) was later released at the stationhouse and his arrest was voided because the officers later determined that § 87(2)(b) was not involved with the assault. Additionally, the officers were unable to identify and speak with the witness or victim of the assault that occurred at 2705 Avenue T.

In EVENT #D18080321540, a third-party caller stated that a Hispanic male, wearing a torn black shirt and parked in front of a fire hydrant, punched a female and slammed her into a car door with a baby present (Board Review 25). The EVENT provided the location of occurrence as 2705 Avenue T. During the CCRB investigation, the 911 caller was called using the phone number obtained from the EVENTS and the individual who answered denied calling 911 and was not familiar with this incident.

Although it is undisputed that the 911 caller was never identified, there is also no evidence to suggest that the information provided by the caller was inaccurate. Additionally, although the assault occurred approximately three blocks from where the officers approached the vehicle, and there was no detailed description of the suspect given aside from him being a Hispanic male in a torn black shirt, the officers stated that they received additional information from a MTA bus driver and an unknown male at the location which indicated that § 87(2)(b) and § 87(2)(b) were the perpetrators. § 87(2)(b), § 87(2)(g)

§ 87(2)(g)

Allegation (C) Discourtesy: In the vicinity of East 29th Street and Avenue U in Brooklyn, Police Officer James Titus spoke discourteously to § 87(2)(b)

As noted above, in PO Martinez's BWC, it shows PO Martinez approaching the passenger side of the vehicle while PO Titus approached the driver side of the vehicle, both with their tasers pointed. At 00:33, off-screen, PO Titus says, "Out the fucking car. Don't move your hands" (Board Review 01). During the interview, when shown this portion of the BWC clip, PO Titus stated that he did not hear anyone say, "Fucking" in the video and PO Titus did not believe he cursed during the incident (Board Review 18). In his CCRB interview, PO Martinez stated that he did not know if PO Titus used profanities by the vehicle (Board Review 19).

Although the BWC does not clearly depict the officer who used the profanity, given that PO Titus and PO Martinez were the only officers on the scene, the profanity was used in conjunction with a command to have everyone get out of the vehicle, and the voice was clearly not PO Martinez's voice. § 87(2)(b), § 87(2)(g)

NYPD Patrol Guide Procedure 203-10 stated that officers shall not use discourteous or disrespectful remarks toward civilians (Board Review 35). However, in DAO-DCT case number: 2017-17276, in a violent and stressful street encounter, “language which would ordinarily be inappropriate in dealing with civilians may be excused” (Board Review 34).

It is undisputed that PO Titus and PO Martinez were responding to an assault and approached the vehicle to investigate the assault. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (E) Force: At 1992 East 29th Street in Brooklyn, Police Officer Andrew Martinez pointed his gun at § 87(2)(b)

Allegation (F) Force: At 1992 East 29th Street in Brooklyn, Police Officer Artem Makaryan pointed his gun at § 87(2)(b)

Allegation (G) Discourtesy: At 1992 East 29th Street in Brooklyn, Police Officer Andrew Martinez spoke discourteously to § 87(2)(b)

At 00:45 seconds of PO Makaryan’s BWC clip, PO Makaryan enters a backyard while officers are heard at a distance asking if someone was there (Board Review 04). PO Makaryan walks towards a fence and it is unclear what is behind the fence due to the fence obstructing the view of the BWC. At 00:52 of PO Makaryan’s BWC clip and at 00:56 seconds of PO Nicholas Felix’s BWC, PO Felix says, “Yeah, he’s right here” (Board Review 03 and 04). At 00:55 of PO Makaryan’s BWC, PO Martinez (off-screen) says, “Get your fucking hands up.” PO Makaryan subsequently raises his firearm and points it towards the fence in front of him. Multiple officers yell out commands for the individual to put their hands up approximately six times between 00:55 and 1:00 minute. At 00:59, PO Martinez says, “Get your fucking hands up.”

At 00:15 of PO Martinez’s BWC, PO Martinez points his firearm towards a fence (Board Review 06).

In his CCRB statement, PO Martinez stated that he chased after § 87(2)(b) to investigate why § 87(2)(b) ran (Board Review 19). At this point, PO Martinez believed that § 87(2)(b) was the perpetrator of the assault. § 87(2)(b) did not have anything in his hands as he ran. PO Martinez lost sight of § 87(2)(b) in a backyard. During the canvass, an officer, identified via the investigation as PO Felix, saw § 87(2)(b). Upon locating § 87(2)(b) PO Martinez told him, “Put your fucking hands up,” two or three times. He did so because he was giving a verbal command during a situation that had escalated. PO Martinez also pointed his firearm at § 87(2)(b) to control the situation. PO Martinez stated that the situation was not under control at this point because § 87(2)(b) ran from him. There were no other reasons why PO Martinez pointed his firearm at § 87(2)(b). When § 87(2)(b) who was lying on the ground under a blanket which covered the area below his torso, stood up, § 87(2)(b) had one hand up and his other hand down by the side of his waist.

Patrol Guide 221-01 states that an officer’s decision to draw their firearm should be based on an articulable belief that the potential for serious physical injury is present (Board Review 33).

NYPD Patrol Guide Procedure 203-10 stated that officers shall not use discourteous or disrespectful remarks toward civilians (Board Review 35). However, in DAO-DCT case number: 2017-17276, in a violent and stressful street encounter, “language which would ordinarily be inappropriate in dealing with civilians may be excused” (Board Review 34).

As noted above, PO Martinez and PO Makaryan believed that § 87(2)(b) was connected with an assault based on their observations and information they received. PO Martinez’s and PO Makaryan’s suspicion of § 87(2)(b) was further elevated when he fled. Moreover, given that the officers temporarily lost sight of § 87(2)(b) and § 87(2)(b) was hiding at the time when they found him, § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (H) Force: At 1992 East 29th Street in Brooklyn, Police Officer James Titus tasered § 87(2)(b)

It is undisputed that PO Titus tasered § 87(2)(b)

At 06:01 of PO Titus’ BWC, PO Titus arrives in the vicinity of the rear of 1992 East 29th Street (Board Review 02). At 06:10, PO Titus enters an alley connecting to the backyards of multiple houses and an officer on the scene says, “He’s behind here somewhere.” PO Titus walks around and at 06:36, PO Martinez says, “Get your fucking hands up.” As noted above, officers tell § 87(2)(b) to get his hands up approximately six times. PO Titus subsequently enters the backyard which is closed off by a fence and the view of the backyard is obstructed by a wall on the right. At 06:43, PO Titus kicks open the fence and turns right. A still-image of PO Titus’ BWC paused at 06:43, shows § 87(2)(b)’s arms raised above his head (Board Review 20). At 6:44, PO Titus tasered § 87(2)(b) and § 87(2)(b) goes down on the ground to his side.

As noted above, PO Martinez gave § 87(2)(b) verbal commands to put his hand up and pointed his firearm at § 87(2)(b) (Board Review 19). PO Martinez also stated that § 87(2)(b) was initially laying under a blanket and when § 87(2)(b) stood up, § 87(2)(b) had one hand up while his other hand was visibly down by his waist. Upon § 87(2)(b) standing up, § 87(2)(b) walked towards PO Titus and then PO Titus tasered § 87(2)(b)

In his CCRB statement, PO Titus stated that when he heard officers repeatedly shouting commands at § 87(2)(b) to show his hands, not to move, and keep his hands up, PO Titus was scared because he believed that § 87(2)(b) was not complying (Board Review 18). PO Titus asked where § 87(2)(b) was and the officers told him that he was on the other side of a fence. At this point, PO Titus drew his taser because he believed that § 87(2)(b) was not complying and he did not know if § 87(2)(b) had any weapons on him. PO Titus had not seen § 87(2)(b) at this point and could only hear what was transpiring. After PO Titus kicked open the fence, entered the backyard, and turned the corner, PO Titus was surprised at how close he and § 87(2)(b) were to each other. PO Titus subsequently discharged his taser, with the prongs making contact with

§ 87(2)(b)'s body. PO Titus did not see § 87(2)(b)'s hands prior to tasing him. PO Titus stated that § 87(2)(b)'s right hand might have been down to his side, but his left hand was not visible. PO Titus did not see § 87(2)(b) holding anything. PO Titus did not issue any commands because other officers were already giving § 87(2)(b) commands. PO Titus stated that he tasered § 87(2)(b) because he could not see § 87(2)(b)'s hands and he was concerned for his safety. PO Titus felt that the taser was the best option because it was the minimum amount of force necessary to arrest § 87(2)(b) since § 87(2)(b) fled on foot. PO Titus stated that he did not feel like engaging in hand to hand combat, and he wanted to neutralize the threat as soon as possible. PO Titus believed that § 87(2)(b) was a threat because he fled from the scene and because he believed § 87(2)(b) had committed a violent crime. § 87(2)(b) was subsequently arrested and brought back to the stationhouse.

In Sgt. Figueroa's interview, Sgt. Figueroa stated that she decided to bring § 87(2)(b) back to the stationhouse for further investigation regarding the assault calls (Board Review 17). Officers did not find the complainant/victim regarding the assault they were investigating with § 87(2)(b) and thus § 87(2)(b) was released on a voided arrest. Prior to his release, § 87(2)(b) was transported to the hospital to remove the taser prongs.

According to the TRI prepared by PO Titus, § 87(2)(b) was not intoxicated, suspected of drug use, and was not emotionally disturbed (Board Review 23). The TRI noted that PO Titus discharged his taser because § 87(2)(b) fled and for "defense of self."

The Command Log shows that § 87(2)(b) was released on a voided arrest at approximately 9:05 p.m. (Board Review 26).

NYPD Patrol Guide Procedure 221-01 states that force may be used when it is reasonable to ensure the safety of a member of the service or otherwise protect life, or when it is reasonable to place person in custody or prevent escape from custody (Board Review 33).

NYPD Patrol Guide Procedure 221-08 states that officers may use conducted electrical weapons (CEW) against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or others (Board Review 32). Active resisting includes evasive movements to avoid the officers attempts to gain control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody. Active aggression is the threat or overt act of an assault (physical or verbal), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent.

It is undisputed that PO Titus believed that § 87(2)(b) was a suspect of an assault and that § 87(2)(b) fled and hid from the officers. It is also undisputed that there were at least four officers in the backyard area when PO Titus arrived on the scene.

Prior to tasing § 87(2)(b) PO Titus had not seen § 87(2)(b) and did not know what he was doing. Although, within a span of approximately seven seconds, officers gave approximately six commands for § 87(2)(b) to put his hands up, there was nothing else that suggested that § 87(2)(b) was not complying. § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

As noted above, although the backyard was dark, it was a confined area, and there were multiple officers, some with their firearms pointed at § 87(2)(b) surrounding him. There were no crowds or other civilians present on scene.

§ 87(2)(g)

Allegation (I) Force: At 1992 East 29th Street in Brooklyn, officers used physical force against § 87(2)(b)

Allegation (J) Force: At 1992 East 29th Street in Brooklyn, an officer used physical force against § 87(2)(b)

In his phone statement, § 87(2)(b) stated that officers beat him up and an officer kicked him in the mouth causing a chip in his tooth.

At 00:40 of PO Hionas' BWC clip, it shows officers handcuffing § 87(2)(b) by placing his arms behind his back while he is on the ground (Board Review 05). At no point does it appear that any officers kicked him or beat him up. At 1:27, the officers lift § 87(2)(b) up. § 87(2)(b) never complained of any injuries or that officers beat him up.

Starting at 00:38 of PO Felix's BWC, § 87(2)(b) is seen in the back of the RMP as they transport him (Board Review 13). There appears to be no injuries to § 87(2)(b)'s face.

Although § 87(2)(b) did not specify how officers beat him up, BWC videos show that officers did not use any force against § 87(2)(b) while he was on the ground and § 87(2)(b) appeared to

have no facial injuries. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to one other CCRB complaint § 87(2)(b)
 - § 87(2)(b)
- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 29).
- PO Makaryan has been a member of service for seven years and has been a subject in one other CCRB complaint and one allegation which was not substantiated.
- PO Martinez has been a member of service for two years and has been a subject of one other CCRB complaint and one allegation which was not substantiated.
- PO Titus has been a member of service for 11 years and has been a subject in 14 CCRB complaints and 31 allegations, none of which were substantiated.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming physical and emotional injuries, damage to his reputation, assault, and harassment and seeking an amount which exceed jurisdictional limits of lower courts as redress (Board Review 28).

- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (Board Review 29).
- According to the Office of Court Administration (OCA), § 87(2)(b)

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date